IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2246 OF 2006

Mohmed Mubarak @ Munna Bashir Khan ...Petitioner
Vs.
D. Sivanandhan & Ors. ...Respondents

Mr. U.N.Tripathi, Advocate for Petitioner
Mr. D.S. Mhaispurkar, A.G.P for State

CORAM: DR. S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.
DATED: 17TH JULY, 2007

ORAL JUDGMENT.

1. The Petitioner has challenged the order of detention No.TC/PD/M. P.D.A./21/2006 dated 21st July, 2006 passed by the Commissioner of Police, Thane under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (M.P.D.A. Act) (the Act).

2. The Petitioner has applied for grant of the Writ of Habeas Corpus upon such a challenge.

3. The Petitioner is stated to be a "dangerous person" as defined in the Act.

4. The detention order dated 31st July, 2006 served upon the Petitioner relates to two criminal complaints filed against the Petitioner for which criminal cases have been registered against him on 17th January, 2006 and 2nd February, 2006 as the main grounds of detention sought by the Respondents. The detention order further relies upon statements of two witnesses, without disclosing their names and other particulars recorded by the Respondents showing how the Petitioner as a dangerous person required to be detained by the Respondents.

5. It may be mentioned that the true and correct translation of the statements of these witnesses recorded in Marathi language have not been provided to the Petitioner. The Respondent's Advocate, therefore, fairly concedes that those statements cannot be looked into. Hence, we deem it appropriate not to refer them.

6. The grounds of detention, therefore, necessarily require reliance upon the two criminal cases filed against the Petitioner for sustaining the detention order.

7. It is the case of the Respondents as reflected in the detention order, that the Petitioner has a violent and

terrorising nature and is a Goonda as reflected in the extract of Goonda register maintained by the relevant Police station being Mumbra Police Station. It is their case that the Petitioner indulges in criminal activities of wrongful restraint, rioting, extortion, hurt, house-trespass etc, which are punishable under the Indian Penal Code. The arrest of the Petitioner and the consequent criminal cases against him are in respect of the aforesaid offences.

8. The first offence, the details of which are enumerated in the detention order, is based upon a criminal complaint of one Riyaz Patel. One Firoz Khan was one of his workers. The criminal complaint is that on 16th January, 2006 the Petitioner and his associates without any reason thrashed Firoz Khan who narrated the incident to the complainant. The complainant questioned the Petitioner about the assault. The Petitioner assaulted the Complainant with hockey sticks all over his body, causing injuries to both his knees and left elbow. He also assaulted another employee. This caused fear and panic in the entire area. None came forward to help the complainant or to resist the Petitioner until he escaped. The complainant was shifted to the hospital where he was admitted, and the case was registered. Three witnesses corroborated his statement. The Petitioner and his associate absconded and were arrested only on 7th February, 2006.

9. The other criminal case against the Petitioner was upon a complaint filed by a grocer Yogeshkumar Patel, who carried on business with his brother in the area. On 2nd February, 2006 at about 23.00 hours the Petitioner along with three associates demanded Rs.1000/- from the complaint. When the demand was not satisfied the Petitioner called his associates and thrashed the complainant with fist blows. Another associate of the Petitioner hit the complainant with a beer bottle on his head and caused injury. When the demand of money was denied, the Petitioner and his associates broke jars from his grocery shop and caused damage, and associate of the Petitioner threatened the complainant at the point of a razor. This generated fear in the entire area and none came to help the victims. On the contrary the neighbours closed their shops and panic was created in the area. The complainant was moved to the hospital and the criminal case came to be registered. Four witnesses have independently corroborated the complainant's statement. Consequently the case against the Petitioner is that upon using criminal intimidation he collects haftas, for non-payment of which he assaulted complainant and his brothers and damaged the shop.

10. It is contended by Mr. Tripathi, the learned Advocate on

behalf of the Petitioner that the first case could not bring the Petitioner under purview of the Act as he is not shown to have used a revolver or any such other dangerous weapon. Mr. Tripathi seeks to contend that the use of hockey sticks cannot be put on par with the use of revolver, pistol, etc. Hockey sticks are capable of causing serious injuries and the serious injuries caused to both the legs, head and elbow of the victim, hence in this case, hockey sticks were used as dangerous weapons. As far as the second case is concerned, Mr. Tripathi did concede that the same affected the public order.

11. These two cases are sufficient to bring the Petitioner squarely within the mischief of definition of the dangerous person under Section 2(b-1) of the Act. The two cases, filed within a span of a month show that the Petitioner habitually commits or abets the commission of the offences as aforesaid under the Indian Penal Code.

12. The commission of such offences have a propensity for repetition and are susceptible to repetition. It shows the career in crime. It is, therefore, not an offence between two individuals or a group of individuals unrelated to the Society. The offences aforesaid committed in the manner described in the grounds of detention necessarily result in instillation of

fear which causes witnesses to refrain from stating the truth before the Criminal Agency and necessarily result in crimes not being prosecuted to its legitimate end. Consequently the activities of persons such as the Petitioner become prejudicial to the maintenance of public order and the smooth functioning of the criminal machinery provided by the State in maintaining public order. The very purpose and object of the Act is the prevention of dangerous activities inter alia of such dangerous persons which would be prejudicial to the maintainance of public order. The two instances are sufficient to bring the Petitioner within the mischief of the Act.

13. Consequential upon the two criminal cases filed within a span of a month, both relating to offences which would instill fear in the mind of the public, the action for detention of the Petitioner came to be initiated.

14. Aside from contending that no case of detention is made out on merits, it is also contended that the action for detention, which is required to be taken with utmost expedition, is grossly delayed and must result in quashing the detention order.

15. It would be prudent to set out the the chronology to

understand the delay, if any, better :

(i) On 17th January, 2006 and again on 3rd February, 2006 criminal cases came to be registered against the Petitioner.

(ii) On 13th February, 2006 and 24th February, 2006 the Petitioner was released on bail, with regard to the above cases.

(iii) On 20th March, 2006 and 21st March, 2006 anonymous statements of two other witnesses came to be recorded showing the continuance of activities of the Petitioner.

(iv) On 3rd April, 2006 the sponsoring authority submitted the proposal for detention of the Petitioner to the Assistant Commissioner of Police.

(v) On 4th April, 2006 the proposal was verified.

(vi) On 7th April, 2006 the proposal was forwarded to the Preventive Crime Branch Cell (PCB Cell).

(vii) On 15th July, 2006 PCB Cell prepared its report

running into 9-pages.

(viii) On 18th July, 2006 the report was endorsed and forwarded by the Additional Commissioner of Police.

(ix) On 18th July, 2006 itself the CP formulated the grounds of detention. Thereafter. The same was sent to PCB Cell for fair typing, from where it was forwarded to the Assistant Commissioner of Police (Crime Prevention) who gave his endorsement on 26th July, 2006. Thereafter, again all documents, grounds etc. were typed and placed before the Commissioner of Police on 31st July, 2006.

(x) On 31st July, 2006 upon its preparation the detention order was placed before the Commissioner of Police who issued the detention order.

16. The main delay in preparing the report came to be caused in the PCB Cell. The delay is explained by the Respondents by showing that there were 20 other earlier proposals pending before the PCB Cell within the 100 day period when the PCB Cell prepared the report. 24 of those days were holidays. Consequently it took about 76 days to prepare and forward the 9-page report. It is contended on

behalf of the Petitioner, by Mr. Tripathi that the explanation is not satisfactory. Consequently the delay is not explained as required. Hence, the detention order suffers from laches, and is required to be struck down.

17. The Advocates of both the parties drew our attention to various judgments showing delay of specified periods. The effect of the delay depends upon the facts of each case. It is settled position in law that delay, of whatever span, must be explained, if unexplained, it may become fatal.

18. In the case of Pradeep Nilkanth Patukar Vs. S. Ramamurthi, AIR 1994 SC, 656, the delay of 5 months and 8 days was found unexplained and the detention order was quashed. The delay in this case is similar to that case. It has been explained as aforesaid in this case. It has to be seen whether such explanation is justified, considering the work-load in the PCB Cell.

19. In the case of Rupesh Ram Thakur Vs. S. Chakravarty, 2005 ALL MR (Cri.) 1132 at page 1140 the delay of one month by one authority and one fortnight by another authority was held satisfactorily explained in the facts of that case.

20. In the case of Shankar Raju Salian Vs. M.N.Singh, 2002 ALL MR (Cri.) 255 the delay of one month and four days, for translating 292 pages of documents was held to be inordinately long. It was observed that promptitude on the part the detention authority was imperative not only to snap the live link between the criminal activities and the preventive order but also to avoid the stigma of a sham subjective satisfaction of the detaining authority.

21. In the case of Sumitra Viresh Tari Vs. M.N.Singh in Criminal Writ Petition No.1789 of 2000 the explanation of the delay stating that the Respondents were on bandobast duty for Ganpati, the visit of the Prime Minister and of the Navratri festival and had 38 cases pending before them was rejected as insufficient explanation.

22. The explanation in this case is that there were 20 cases pending before the case of the Petitioner. It can be seen that 20 cases took about 70 days for disposal before the PCB Cell. We are not concerned with the content or bulkiness of those cases. 3 months and 1 week passed before all the evidence in the 2 cases and the anonymous statements came to be collected and the case prepared. There is nothing to show that the activities of the Petitioner had abated in the meantime. In fact a 3-months period is not sufficient for the

Petitioner to turn over a new leaf. The live link between his activities and the contemplated action has, therefore, not snapped.

23. Mr. Mhaispurkar, the learned Assistant Public Prosecutor for the Respondents relied upon the case of Rajesh Vasant Jadhav Vs. State of Maharashtra 2006(7) LJSOFT 82 in which it is held by the Division Bench of this Court that mechanical calculations of days and months cannot be done to determine the delay which could effect the detention order, and that as long as the live link between the prejudicial acts and the detention order is not snapped and as long as the alleged incident is not too remote to show that the propensity to indulge in future in prejudicial activities has ceased to exist, it cannot be said that the live link is snapped. There was a delay of more than five months, between the date of the crime and the date of the detention order. It took between January, 2005 when the crime was committed and May, 2005 when the proposal for taking preventive action itself was submitted. The papers of the investigation in the case including the medical certificate were not received till April, 2005 after which alone the proposal could be prepared along with the documents. Hence, it was held that the delay of the first four months was explained by the collection of documentary evidence itself

after which the sponsoring authority can prepare its proposal. In this case the proposing authority had submitted its proposal within 2 months of the commission of offences and 10 days of the anonymous statements being recorded. The papers were before the PCB Cell. Following upon the reasoning of the Division Bench in the case of **Rajesh Vasant Jadhav**, with which we fully agree, we find that mechanical calculations of the number of days delay would only defeat justice. What has to be seen is whether the incident was so remote that the live link between the crime and action could be stated to have snapped. Activities such as those of the Petitioner, are expected to continue over a period of years. They cannot be taken as remote activities within a period of months. Hence, the mechanical calculations sought to be made on behalf of the Petitioner must be eschewed. The quantitative calculation cannot subdue qualitative action. This is not a case of unexplained and inordinate delay, vitiating the order of detention. Hence, the action cannot be assailed on the ground of delay also. Consequently no case for setting aside the Detention order is made out by the Petitioner.

24. The Petition is dismissed. Rule stands discharged.

(DR. S. RADHAKRISHNAN, J.)

(SMT. ROSHAN DALVI, J.)